

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 31

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO CRIMINAL LAW; PROVIDING ADDITIONAL PENALTIES FOR  
UNLAWFUL TAKING OF A VEHICLE OR MOTOR VEHICLE; CREATING NEW  
CRIMINAL OFFENSES OF EMBEZZLEMENT OF A VEHICLE OR MOTOR VEHICLE  
AND FRAUDULENTLY OBTAINING A VEHICLE OR MOTOR VEHICLE;  
INCLUDING OFFENSES RELATING TO MOTOR VEHICLES IN THE CRIMINAL  
OFFENSE OF RACKETEERING; AMENDING AND ENACTING SECTIONS OF THE  
CRIMINAL CODE; AMENDING AND RECOMPILING SECTIONS OF THE MOTOR  
VEHICLE CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-3-504 NMSA 1978 (being Laws 1978,  
Chapter 35, Section 91, as amended) is recompiled as Section  
30-16D-1 NMSA 1978 and is amended to read:

"30-16D-1. UNLAWFUL TAKING OF A VEHICLE OR MOTOR  
VEHICLE.--

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1           A. ~~[Any person who takes]~~ Unlawful taking of a  
2 vehicle or motor vehicle consists of a person taking any  
3 vehicle or motor vehicle as defined by the Motor Vehicle Code  
4 intentionally and without consent of the owner. Whoever  
5 commits unlawful taking of a vehicle or motor vehicle is guilty  
6 of a:

7                   (1) ~~[of a]~~ fourth degree felony ~~[if the~~  
8 ~~vehicle or motor vehicle has a value of less than two thousand~~  
9 ~~five hundred dollars (\$2,500); and]~~ for a first offense;

10                   (2) ~~[of a]~~ third degree felony ~~[if the vehicle~~  
11 ~~or motor vehicle has a value of two thousand five hundred~~  
12 ~~dollars (\$2,500) or more]~~ for a second offense; and

13                   (3) second degree felony for a third or  
14 subsequent offense.

15           B. The consent of the owner of the vehicle or motor  
16 vehicle to its taking shall not in any case be presumed or  
17 implied because of the owner's consent on a previous occasion  
18 to the taking of the vehicle or motor vehicle by the same or a  
19 different person.

20                   ~~[G. The district courts are given exclusive~~  
21 ~~jurisdiction to hear and try offenses prescribed under this~~  
22 ~~section.~~

23                   ~~D.]~~ C. Nothing in this section shall be construed  
24 to prohibit the holder of a lien duly recorded with the motor  
25 vehicle division of the taxation and revenue department from

1 taking possession of a vehicle to which possession the  
2 lienholder is legally entitled under the provisions of the  
3 instrument evidencing the lien. A holder of a duly recorded  
4 lien who takes possession of a vehicle without the knowledge of  
5 the owner of the vehicle shall immediately notify the local  
6 police authority of the fact that [~~he~~] the holder has taken  
7 possession of the vehicle."

8 Section 2. A new Section 30-16D-2 NMSA 1978 is enacted to  
9 read:

10 "30-16D-2. [NEW MATERIAL] EMBEZZLEMENT OF A VEHICLE OR  
11 MOTOR VEHICLE.--

12 A. Embezzlement of a vehicle or motor vehicle  
13 consists of a person embezzling or converting to the person's  
14 own use a vehicle or motor vehicle as defined by the Motor  
15 Vehicle Code, with which the person has been entrusted, with  
16 the fraudulent intent to deprive the owner of the vehicle or  
17 motor vehicle.

18 B. Whoever commits embezzlement of a vehicle or  
19 motor vehicle is guilty of a:

- 20 (1) fourth degree felony for a first offense;
- 21 (2) third degree felony for a second offense;

22 and

23 (3) second degree felony for a third or  
24 subsequent offense."

25 Section 3. A new Section 30-16D-3 NMSA 1978 is enacted to

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1 read:

2 "30-16D-3. [NEW MATERIAL] FRAUDULENTLY OBTAINING A  
3 VEHICLE OR MOTOR VEHICLE.--

4 A. Fraudulently obtaining a vehicle or motor  
5 vehicle consists of a person intentionally misappropriating or  
6 taking a vehicle or motor vehicle as defined by the Motor  
7 Vehicle Code that belongs to another person by means of  
8 fraudulent conduct, practices or representations.

9 B. Whoever commits fraudulently obtaining a vehicle  
10 or motor vehicle is guilty of a:

11 (1) fourth degree felony for a first offense;

12 (2) third degree felony for a second offense;

13 and

14 (3) second degree felony for a third or  
15 subsequent offense."

16 Section 4. Section 66-3-505 NMSA 1978 (being Laws 1978,  
17 Chapter 35, Section 92) is recompiled as Section 30-16D-4 NMSA  
18 1978 and is amended to read:

19 "30-16D-4. RECEIVING OR TRANSFERRING STOLEN VEHICLES OR  
20 MOTOR VEHICLES.--~~[Any]~~

21 A. Receiving or transferring a stolen vehicle or  
22 motor vehicle consists of a person who, with intent to procure  
23 or pass title to a vehicle or motor vehicle ~~[which he]~~ as  
24 defined by the Motor Vehicle Code that the person knows or has  
25 reason to believe has been stolen or unlawfully taken, receives

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1 or transfers possession of the [~~same~~] vehicle or motor vehicle  
 2 from or to another or who has in [~~his~~] the person's possession  
 3 any vehicle [~~which he~~] that the person knows or has reason to  
 4 believe has been stolen or unlawfully taken [~~and who is not~~].  
 5 This section shall not apply to an officer of the law engaged  
 6 at the time in the performance of [~~his~~] the officer's duty as  
 7 [~~such~~] an officer [~~is guilty of a fourth degree felony and upon~~  
 8 ~~conviction shall be sentenced to imprisonment for not less than~~  
 9 ~~one nor more than five years or to the payment of a fine of not~~  
 10 ~~more than five thousand dollars (\$5,000) or to both such~~  
 11 ~~imprisonment and fine in the discretion of the judge].~~

12 B. Whoever commits receiving or transferring a  
 13 stolen vehicle or motor vehicle is guilty of a:

14 (1) fourth degree felony for a first offense;

15 (2) third degree felony for a second offense;

16 and

17 (3) second degree felony for a third or  
 18 subsequent offense."

19 Section 5. Section 66-3-506 NMSA 1978 (being Laws 1978,  
 20 Chapter 35, Section 93) is recompiled as Section 30-16D-5 NMSA  
 21 1978 and is amended to read:

22 "30-16D-5. INJURING OR TAMPERING WITH A MOTOR VEHICLE.--  
 23 [Any]

24 A. Injuring or tampering with a motor vehicle  
 25 consists of a person [~~who shall~~], individually or in

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1 association with ~~[one or more others do any of the following~~  
2 ~~shall be guilty of a misdemeanor and upon conviction thereof~~  
3 ~~shall be imprisoned in the county jail for not less than six~~  
4 ~~months nor more than one year]~~ another person:

5 [A.] (1) purposely and without authority from  
6 the owner [~~start~~] starting or [~~cause~~] causing to be started the  
7 engine of any motor vehicle;

8 [B.] (2) purposely and maliciously [~~shift~~]  
9 shifting or [~~change~~] changing the starting device or gears of a  
10 standing motor vehicle to a position other than that in which  
11 they were left by the owner or driver of [~~said~~] the motor  
12 vehicle;

13 [C.] (3) purposely [~~scratch~~] scratching or  
14 [~~damage~~] damaging the chassis, running gear, body, sides, top  
15 covering or upholstering of a motor vehicle [~~which~~] that is the  
16 property of another;

17 [D.] (4) purposely [~~destroy~~] destroying any  
18 part of a motor vehicle or purposely [~~cut, mash, mark~~] cutting,  
19 mashing or marking or in any other way [~~destroy~~] destroying or  
20 [~~damage~~] damaging any part, attachment, fastening or  
21 appurtenance of a motor vehicle without the permission of the  
22 owner;

23 [E.] (5) purposely [~~drain~~] draining or [~~start~~]  
24 starting the drainage of any radiator, oil tank or gas tank  
25 upon a motor vehicle without the permission of the owner;

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1           [F-] (6) purposely [~~put~~] putting any metallic  
2 or other substance or liquid in the radiator, carburetor, oil  
3 tank, grease cup, oilers, lamps, gas tanks or machinery of the  
4 motor vehicle with the intent to injure or damage [~~the same~~] or  
5 impede the working of the machinery [~~thereof~~] of the motor  
6 vehicle;

7           [G-] (7) maliciously [~~tighten~~] tightening or  
8 [~~loosen~~] loosening any bracket, bolt, wire, nut, screw or other  
9 fastening on a motor vehicle; or

10           [H-] (8) purposely [~~release~~] releasing the  
11 brake upon a standing motor vehicle with the intent to injure  
12 [~~said machine~~] the motor vehicle.

13           B. Whoever commits injuring or tampering with a  
14 motor vehicle is guilty of a misdemeanor.

15           C. As used in this section, "motor vehicle" means a  
16 motor vehicle as defined by the Motor Vehicle Code."

17           Section 6. Section 66-3-508 NMSA 1978 (being Laws 1978,  
18 Chapter 35, Section 95) is recompiled as Section 30-16D-6 NMSA  
19 1978 and is amended to read:

20           "30-16D-6. ALTERING OR CHANGING ENGINE OR OTHER  
21 NUMBERS.--

22           A. No person shall, with fraudulent intent, deface,  
23 remove, cover, destroy or alter the manufacturer's serial [~~or~~]  
24 number, engine number, decal or other distinguishing number or  
25 identification mark or number placed [~~thereon~~] under assignment

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1 of the motor vehicle division of the taxation and revenue  
2 department of a vehicle required to be registered under the  
3 Motor Vehicle Code or any vehicle, motor vehicle or motor  
4 vehicle engine or component as defined by the Motor Vehicle  
5 Code for which a dismantler's notification form has been  
6 processed through the division, nor shall any person place or  
7 stamp any serial, engine, decal or other number or mark upon  
8 [~~such~~] the vehicle except one assigned [~~thereto~~] by the  
9 division. Any violation of this [~~provision~~] section is a  
10 fourth degree felony.

11 B. This section shall not prohibit the restoration  
12 by an owner of an original serial, engine, decal or other  
13 number or mark when [~~such~~] the restoration is made under permit  
14 issued by the division nor prevent any manufacturer from  
15 placing, in the ordinary course of business, numbers, decals or  
16 marks upon vehicles or parts thereof."

17 Section 7. Section 30-42-3 NMSA 1978 (being Laws 1980,  
18 Chapter 40, Section 3, as amended) is amended to read:

19 "30-42-3. DEFINITIONS.--As used in the Racketeering Act:

20 A. "racketeering" means any act that is chargeable  
21 or indictable under the laws of New Mexico and punishable by  
22 imprisonment for more than one year, involving any of the  
23 following cited offenses:

24 (1) murder, as provided in Section 30-2-1 NMSA  
25 1978;

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- 1 (2) robbery, as provided in Section 30-16-2
- 2 NMSA 1978;
- 3 (3) kidnapping, as provided in Section 30-4-1
- 4 NMSA 1978;
- 5 (4) forgery, as provided in Section 30-16-10
- 6 NMSA 1978;
- 7 (5) larceny, as provided in Section 30-16-1
- 8 NMSA 1978;
- 9 (6) fraud, as provided in Section 30-16-6 NMSA
- 10 1978;
- 11 (7) embezzlement, as provided in Section
- 12 30-16-8 NMSA 1978;
- 13 (8) receiving stolen property, as provided in
- 14 Section 30-16-11 NMSA 1978;
- 15 (9) bribery, as provided in Sections 30-24-1
- 16 through ~~[30-24-3]~~ 30-24-3.1 NMSA 1978;
- 17 (10) gambling, as provided in Sections
- 18 30-19-3, 30-19-13 and 30-19-15 NMSA 1978;
- 19 (11) illegal kickbacks, as provided in
- 20 Sections 30-41-1 and 30-41-2 NMSA 1978;
- 21 (12) extortion, as provided in Section 30-16-9
- 22 NMSA 1978;
- 23 (13) trafficking in controlled substances, as
- 24 provided in Section 30-31-20 NMSA 1978;
- 25 (14) arson and aggravated arson, as provided

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1 in Subsection A of Section 30-17-5 and Section 30-17-6 NMSA  
2 1978;

3 (15) promoting prostitution, as provided in  
4 Section 30-9-4 NMSA 1978;

5 (16) criminal solicitation, as provided in  
6 Section 30-28-3 NMSA 1978;

7 (17) fraudulent securities practices, as  
8 provided in the New Mexico Securities Act of 1986;

9 (18) loan sharking, as provided in Sections  
10 30-43-1 through 30-43-5 NMSA 1978;

11 (19) distribution of controlled substances or  
12 controlled substance analogues, as provided in Sections  
13 30-31-21 and 30-31-22 NMSA 1978; [~~and~~]

14 (20) a violation of the provisions of Section  
15 [~~4 of the Money Laundering Act~~] 30-51-4 NMSA 1978;

16 (21) unlawful taking of a vehicle or motor  
17 vehicle, as provided in Section 30-16D-1 NMSA 1978;

18 (22) embezzlement of a vehicle or motor  
19 vehicle, as provided in Section 30-16D-2 NMSA 1978;

20 (23) fraudulently obtaining a vehicle or motor  
21 vehicle, as provided in Section 30-16D-3 NMSA 1978;

22 (24) receiving or transferring stolen vehicles  
23 or motor vehicles, as provided in Section 30-16D-4 NMSA 1978;

24 and

25 (25) altering or changing the serial number,

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1 engine number, decal or other numbers or marks of a vehicle or  
2 motor vehicle, as provided in Section 30-16D-6 NMSA 1978;

3 B. "person" means an individual or entity capable  
4 of holding a legal or beneficial interest in property;

5 C. "enterprise" means a sole proprietorship,  
6 partnership, corporation, business, labor union, association or  
7 other legal entity or a group of individuals associated in fact  
8 although not a legal entity and includes illicit as well as  
9 licit entities; and

10 D. "pattern of racketeering activity" means  
11 engaging in at least two incidents of racketeering with the  
12 intent of accomplishing any of the prohibited activities set  
13 forth in Subsections A through D of Section 30-42-4 NMSA 1978;  
14 provided at least one of the incidents occurred after [~~the~~  
15 ~~effective date of the Racketeering Act]~~ February 28, 1980 and  
16 the last incident occurred within five years after the  
17 commission of a prior incident of racketeering."

18 Section 8. Section 66-3-501 NMSA 1978 (being Laws 1978,  
19 Chapter 35, Section 88, as amended) is amended to read:

20 "66-3-501. REPORT OF STOLEN AND RECOVERED VEHICLES OR  
21 MOTOR VEHICLES.--

22 A. Every sheriff, chief of police or peace officer  
23 upon receiving reliable information that any vehicle  
24 [~~registered under the Motor Vehicle Code]~~ or motor vehicle has  
25 been stolen shall immediately, but in no case later than one

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1 week after receiving the information, report the theft to the  
2 New Mexico state police or other appropriate law enforcement  
3 agency unless, prior thereto, information has been received of  
4 the recovery of the vehicle or motor vehicle. Any officer,  
5 upon receiving information that any vehicle [~~which he~~] or motor  
6 vehicle that the officer has previously reported as stolen has  
7 been recovered, shall immediately report the fact of recovery  
8 to the local sheriff's office or police department and to the  
9 New Mexico state police.

10 B. The requirement that the theft or recovery of a  
11 vehicle or motor vehicle be reported to the New Mexico state  
12 police is satisfied if the report is made to the national crime  
13 information center."

14 Section 9. Section 66-3-502 NMSA 1978 (being Laws 1978,  
15 Chapter 35, Section 89) is amended to read:

16 "66-3-502. REPORTS BY OWNERS OF STOLEN AND RECOVERED  
17 VEHICLES OR MOTOR VEHICLES.--

18 A. The owner or person having a lien or encumbrance  
19 upon a [~~registered~~] vehicle [~~which~~] or motor vehicle that has  
20 been stolen or embezzled may notify the New Mexico state police  
21 or other appropriate law enforcement agency of [~~such~~] the theft  
22 or embezzlement but, in the event of an embezzlement, may make  
23 [~~such~~] a report only after having procured the issuance of a  
24 warrant for the arrest of the person charged with [~~such~~] the  
25 embezzlement.

1           B. Every owner or other person who has given any  
2 such notice shall immediately notify the New Mexico state  
3 police or the law enforcement agency that took the report of a  
4 recovery of [~~such~~] the vehicle."

5           Section 10. Section 66-3-507 NMSA 1978 (being Laws 1978,  
6 Chapter 35, Section 94) is amended to read:

7           "66-3-507. ALTERED VEHICLE IDENTIFICATION NUMBERS--  
8 CONTRABAND.--

9           A. Any person receiving, disposing of, offering to  
10 dispose of or having in [~~his~~] the person's possession any  
11 vehicle, [~~or~~] motor vehicle or motor vehicle engine or  
12 component shall make adequate inquiry and inspection to  
13 determine that no manufacturer's serial number, engine or  
14 component number or other distinguishing number or mark or  
15 identification mark or number placed [~~there on~~] under  
16 assignment of the division has been removed, defaced, covered,  
17 altered or destroyed.

18           B. When the inspection of a vehicle, [~~or~~] motor  
19 vehicle or motor vehicle engine or component by any law  
20 enforcement officer indicates that the manufacturer's serial  
21 number or decal, engine or component number or other  
22 distinguishing number or mark or identification mark or number  
23 placed [~~thereon~~] under assignment of the division has been  
24 removed, defaced, covered, altered or destroyed, that vehicle,  
25 motor vehicle or motor vehicle engine or component may be

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1 impounded for a period of time not to exceed ninety-six hours  
2 unless part of that time [~~shall fall~~] falls upon a Saturday,  
3 Sunday or a legal holiday, in which case the vehicle, motor  
4 vehicle or motor vehicle engine or component may be impounded  
5 for a period of time not to exceed six days. At the expiration  
6 of the stated time period, the vehicle, [~~or~~] motor vehicle or  
7 motor vehicle engine or component shall be returned to the  
8 person from whom it was taken at no cost unless an ex parte  
9 order allowing continued impoundment is issued by a magistrate  
10 or district court judge after finding that probable cause  
11 exists to believe that the manufacturer's serial number, engine  
12 or component number or other distinguishing number or mark or  
13 identification mark or number placed [~~thereon~~] under assignment  
14 of the division has been removed, defaced, covered, altered or  
15 destroyed. Within ten days of the issuance of [~~such an~~] the  
16 order, the law enforcement agency shall cause to have the  
17 matter of the vehicle, [~~or~~] motor vehicle or motor vehicle  
18 engine or component brought before a district court by filing  
19 in that court a petition requesting that the vehicle or item be  
20 declared contraband unless the court grants an extension of  
21 time for [~~such~~] the filing based on some reasonable requirement  
22 for extension of [~~such~~] the filing by the law enforcement  
23 agency. If at the time of the hearing on that petition the  
24 court finds that the manufacturer's serial number, engine or  
25 component number or other distinguishing number or mark or

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1 identification mark or number placed ~~[thereon]~~ under assignment  
2 of the division has been removed, defaced, covered, altered or  
3 destroyed, the court shall declare the vehicle, motor vehicle  
4 or motor vehicle engine or component to be contraband unless  
5 one of the exceptions enumerated in this section applies. At  
6 the time the vehicle, motor vehicle or motor vehicle engine or  
7 component is declared to be contraband, the court shall order  
8 that it be disposed of according to Subsection D of this  
9 section. Any vehicle, motor vehicle or motor vehicle engine or  
10 component in such condition shall not be subject to replevin  
11 except by an owner who can trace ~~[his]~~ the owner's ownership of  
12 that vehicle, motor vehicle or motor vehicle engine or  
13 component from the manufacturer by furnishing the court records  
14 indicating the identity of all intermediate owners. The law  
15 enforcement agency seizing ~~[such a]~~ the vehicle, motor vehicle  
16 or motor vehicle engine or component shall provide the person  
17 from whom it was taken a receipt for ~~[such]~~ the vehicle, motor  
18 vehicle or motor vehicle engine or component.

19 C. ~~[Such]~~ The vehicle, motor vehicle or motor  
20 vehicle engine or component shall not be considered contraband  
21 when:

22 (1) it has been determined that ~~[such]~~ the  
23 vehicle, motor vehicle or motor vehicle engine or component has  
24 been reported as stolen;

25 (2) ~~[that]~~ the vehicle, motor vehicle or motor

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1 vehicle engine or component is recovered in the condition  
2 described in Subsection B of this section;

3 (3) it clearly appears that the true owner is  
4 [~~in no way~~] not responsible for the altering, concealing,  
5 defacing or destroying [~~or alteration~~] of the vehicle, motor  
6 vehicle or motor vehicle engine or component;

7 (4) the true owner obtains an assigned number  
8 issued by the division for [~~such~~] the vehicle, motor vehicle or  
9 motor vehicle engine or component;

10 (5) the new assigned numbers have been issued  
11 for and placed upon the vehicle, motor vehicle or motor vehicle  
12 engine or component by the division [~~of motor vehicles~~]  
13 utilizing a unique numbering system for that purpose; or

14 (6) a person licensed under the provisions of  
15 Sections [~~214 through 222 of this act~~] 66-4-1 through 66-4-9  
16 NMSA 1978, when in the course of [~~his~~] the person's business  
17 and consistent with the provisions of Section [~~95 of this act~~]  
18 30-16D-6 NMSA 1978 and the rules and regulations promulgated by  
19 the division, removes, defaces, covers, alters or destroys the  
20 manufacturer's serial or engine or component number or other  
21 distinguishing number or identification mark or number placed  
22 under assignment of the division of a vehicle required to be  
23 registered under the Motor Vehicle Code [~~or number placed~~  
24 ~~thereon under assignment of the division~~].

25 D. If it is impossible to locate a true owner who

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1 meets the provisions of Subsection C of this section to claim  
2 [~~such a~~] the vehicle, motor vehicle or motor vehicle engine or  
3 component, it may be retained [~~by the law enforcement agency~~  
4 ~~confiscating it~~] as long as it is used for police purposes,  
5 after which time, or if not suitable for police use, it shall  
6 be destroyed."

7 Section 11. EFFECTIVE DATE.--The effective date of the  
8 provisions of this act is July 1, 2009.

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